IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1047 of 2001

in

SPECIAL CIVIL APPLICATIONNo 1871 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHANUBEN W/O AMRUTBHAI NARANBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

Shri H.M. Mehta, Senior Counsel with
Ms.D.R. KACHHAVAH for the appellant.

Shri K.T. Dave, ASSTT GOVERNMENT PLEADER for
the respondents.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE RAVI R.TRIPATHI

Date of decision: / /200

C.A.V. JUDGEMENT (Per : MR.JUSTICE RAVI R.TRIPATHI)

The present Letters Patent Appeal is filed against the judgement and order dated 6.9.2001 passed by the learned Single Judge whereby the petition was rejected and the rule was discharged.

2. The petition was filed under Article 226 of the Constitution of India by the petitioner/ detenu, challenging the order of detention dated 20.1.2001 issued by the Commissioner of Police, Surat City, in exercise of powers conferred upon him under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act"). The petitioner prayed for a writ of habeas corpus or any other appropriate writ quashing and setting aside the impugned order of detention.

3. The order of detention was issued on the ground that the petitioner is a bootlegger within the meaning of section 2(b) of the Act and that the petitioner is involved in five cases under the Prohibition Act, which are registered against the petitioner at various Police Stations of Surat City. Statements of two independent witnesses were also recorded which inter alia reveal that the petitioner is a bootlegger and indulges in bootlegging activity which is detrimental to maintenance of public health which in turn poses threat to maintenance of public order. Therefore, it had become necessary for the detaining authority to detain the petitioner under the Act.

4. The petitioner challenged the order of detention mainly on the ground that the relevant papers including reports of Chemical Analyser and the papers relating to release of the petitioner on bail have not been supplied to the petitioner which had resulted in violation of the right of the petitioner to make an effective representation as guaranteed under Article 22 (5) of the Constitution of India. The petitioner also contended that the privilege claimed under section 9(2) of the Act is not genuine and therefore, the continued detention of the petitioner is illegal. The petitioner had taken all other contentions, such as, the State Government had not made reference with all relevant materials and documents relating to the order of detention against the petitioner

to the Advisory Board in time as stipulated under the Act and thus, the mandatory provision has not been complied with, therefore, the continued detention of the petitioner has become illegal. It was also contended by the petitioner that the petitioner had sent representation dated 6.2.2001 to the detaining authority with a request to forward it to the State Government for consideration, that there was delay in considering the said representation by the authorities and thereby there is violation of valuable right of the petitioner guaranteed under Article 22(5) of the Constitution of India.

5. The petition was contested by the respondents by filing two separate affidavits; one by Shri J.R. Rajput, Under Secretary, Home Department, Gujarat State, and the other by Shri V.K. Gupta, Commissioner of Police, Surat City, Surat.

6. The learned Judge considered the submissions made on behalf of the petitioner and the submissions made by the learned Assistant Government Pleader Shri K.T. Dave on behalf of the respondent authorities. After taking into consideration various authorities relied upon by Ms.Kachhavah learned advocate for the petitioner and also the authorities relied upon by the learned Assistant Govt. Pleader, Shri K.T. Dave, the learned Single Judge decided the contention of non supply of the Chemical Analyser's report to the detenu by observing in para 16 of the judgement as under :

"16. On this point there is catena of decisions of this Court wherein on similar fact situation this Court has held that irrespective of the fact whether the detaining authority has considered that C.A. report or papers of bail order, non supply of those documents vitiates the order of detention and, therefore, on this ground, I have not been able to persuade myself to agree with the submission advanced by Mr.Dave. According to me, those documents, more particularly the C.A. reports, are very vital documents as on the basis of the said report it can be examined whether the samples collected by the investigating officer while registering complaints under the Prohibition Act in fact contained alcohol or not and if ultimately the C.A. reports reveal that the samples collected do not contain alcohol in that case it can be said that the petitioner is not involved in prohibition cases and is not a bootlegger within

the meaning of section 2 (b) of the Act. Therefore, in my view, non supply of such documents irrespective of the fact whether they are considered at the time of passing the order of detention or not, are vital documents and non supply of such documents vitiates the continued detention of the detenu." (emphasis supplied)

7. The learned Judge while dealing with the submissions made by the learned Assistant Government Pleader about severability of the grounds under section 6 of the Act considered various contentions raised by the learned advocate for the petitioner in para 17 onwards. The submission of the learned Assistant Government Pleader was that the detaining authority has passed order of detention on the basis of the statements of the two witnesses also and they form separate grounds. Unless the petitioner satisfies that detention of the petitioner is vitiated on each of the grounds as the petitioner's right to make effective representation is violated, the order of detention cannot be said to be bad in law. The attempt on the part of the learned advocate for the petitioner was that five offences were registered against the petitioner under the Prohibition Act and the statements of the two witnesses form a composite ground and the question of 'severability of ground' as provided under section 6 of the Act does not arise. Learned advocate for the petitioner relied upon the judgement of the Honourable Apex Court in the case of A. Sowkath Ali v. Union of India and others, reported in AIR 2000 SC 2662. The learned Judge after dealing with the contentions raised by both the sides was pleased to hold in para 26 as under :

"26. In view of the ratio laid down in the judgment of the Full Bench of this Court, there is no manner of doubt that the provisions of section 6 of the Act can be invoked if there is more than one ground of detention and if the petitioner fails to establish how each ground vitiates the order of detention and the detention order should be held invalid."

8. The final conclusions recorded by the learned Single Judge in para 32 read as under:

"32. On overall view of the matter, so far as the five cases registered against the petitioner under the Prohibition Act are concerned, the petitioner's right to make effective representation on account of non supply of the

documents like C.A. reports and application of bail and its order which are vital documents, is violated and therefore, it vitiates the continued detention of the detenu. However, so far as other ground of detention, that is, statements of two witnesses are concerned, the privilege is rightly claimed and grounds of detention are severable and the learned advocate for the petitioner is unable to persuade this Court how this ground is vague. Therefore, order of detention is sustainable."

9. Learned counsel Shri H.M. Mehta appearing for the appellant- original petitioner with the learned advocate Ms.Kacchavah submitted that section 6 of the Act is wrongly applied to the facts of the case. The ground of detention formed one composite ground and the same is vitiated as the petitioner's right to make representation under Article 22(5) of the Constitution of India is violated. On that ground alone the continued detention of the petitioner should have been declared illegal and the petitioner should have been set at liberty forthwith. Perusal of sec.6 of the Act is necessary at this stage. Section 6 of the Act reads as under :

"6. Grounds of detention severable -- Where a person has been detained in pursuance of an order of detention under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each ground and accordingly --

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are --

(i) vague,
(ii) non existent,
(iii) not relevant,
(iv) not connected or not proximately connected with such person, or
(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or the officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or the officer making the order of detention shall be deemed to have made

the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

10. Shri Mehta, learned counsel submitted that clause (a) of section 6 of the Act provides that an order which was made on two or more grounds is deemed to be not invalid even if one or some of the grounds of the invalidity mentioned in the said clause, namely, grounds being vague, non existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever. Shri Mehta, the learned counsel submitted that this will mean that even if the order based on the ground which suffers from any of the aforesaid invalidity, the order is given a 'deeming validity'. But that does not mean that right of the petitioner to make representation flowing from Article 22(5) of the Constitution of India can be waived or given a go by. Shri Mehta, learned counsel submitted with all vehemence at his command that the learned Single Judge has erred in not considering the fact of denial of opportunity to the detenu to persuade the detaining authority to come to the conclusion that her continued detention is not warranted in view of the fact that out of the so called seven grounds, namely, five cases and two statements, five cases do not survive on account of 'non supply of the Chemical Analyser's report'. Now what remains against the petitioner-detenu is only the two statements. Shri Mehta, learned counsel strenuously submitted that had the detenu given an opportunity to persuade the detaining authority, the detenu could have persuaded the authority that in absence of five cases registered against the detenu, the continued detention of the petitioner is not warranted on the basis of mere two statements.

11. Shri Mehta, learned counsel appearing for the appellant- detenu submitted in the alternative that in the present case though the authorities have filed an affidavit, said affidavit is silent on the question of severability under section 6 of the Act. Shri Mehta submitted that in that fact situation the judgement of the Apex Court in the case of A. Sowkath Ali v. Union of India and others (supra) [AIR 2000 SC 2662] is squarely applicable to the facts of the present case. Shri Mehta submitted that the learned Single Judge has distinguished the said case on the ground that,

".. .. in that the order of detention was passed on composite ground and there the

State had not filed any counter affidavit raising question of severability under section 5A of the COFEPOSA and in that circumstances the Supreme Court has held that question of severability would not arise."

12. Shri Mehta, learned counsel for the appellant/ original petitioner also relied upon the judgement of this Court in the matter between Israil alias Israr Pahelvan Nazirahmed Shaikh v. State of Gujarat, reported in 2001 (1) GLR 306, wherein the decision of the Apex Court in the matter of A. Sowkath Ali v. Union of India and others (supra) is referred to in para 77. Mr.Mehta submitted that the detaining authority has taken into consideration all the facts together. Shri Mehta submitted that from the reading of page 24 of the petition it is clear that the order of detention is passed on one composite ground and therefore, the detention order must fail when the petitioner detenu is able to show that her right of making representation is violated on account of non supply of Chemical Analyser's report or withholding of the names of the associates of the detenu or the persons who came forward to rescue the witnesses whose statements are recorded.

13. Shri Mehta, learned counsel for the appellant submitted that the privilege claimed under section 9(2) of the Act whereby the names of witnesses, whose statements were recorded are not supplied. Shri Mehta, learned counsel submitted that the privilege claimed under section 9(2) is wrongly claimed by the detaining authority. Besides the challenge to improperly claiming privilege, Shri Mehta also contended that the right of making representation is also affected by non supply of the names of the associates of the petitioner and non supply of names of rescuers. Shri Mehta stated that the statements recorded and relied upon by the detaining authority wherein in the first statement the incident of 22.11.2000 is referred to. In that statement it is stated that the petitioner was along with her four associates had gone to the witness, whose statement is recorded. It is further recorded that when the associates of the petitioner started beating the witness, 3 - 4 persons had tried to rescue the witnesses. Similarly, in the second statement an incident of 10.12.2000 is recorded wherein also it is stated that the petitioner along with her four associates had gone to the place of business of the witness and while two of the associates of the petitioner dragged the witness on the road and started beating four persons who were acquaintances of the witness had come forward from the

crowd to rescue the witness. Shri Mehta submitted that assuming without admitting that the privilege claimed against disclosure of the names of the witnesses is valid, the appellant's right of making representation is violated on account of non supply of the details of the associates of the petitioner and the persons who had come forward to rescue the witnesses, whose statements are recorded.

14. Shri Mehta, learned counsel appearing for the appellant submitted that this Court (Coram: A.M. Kapadia, J.) in Special Civil Application No.3734 of 2001 vide order dated 23.10.2001 held that the Chemical Analyser's report is a vital document as on the basis of the said report it can be examined whether the samples collected by the investigating officer while registering complaints under the Prohibition Act in fact contained alcohol or not and if ultimately the Chemical Analyser's report reveals that the samples collected do not contain alcohol, in that case it can be said that the petitioner is not involved in prohibition cases and is not a bootlegger within the meaning of section 2(b) of the Act. In the present case also the learned Judge has held in para 16 as under:

> ".. .. Therefore, in my view, non supply of such documents irrespective of the fact whether they are considered at the time of passing the order of detention or not, are vital documents and non supply of such documents vitiates the continued detention of the detenu."

Thus, on this point the learned Single Judge has held in favour of the present appellant- original petitioner.

15. Shri Mehta, learned counsel for the appellant also relied upon a judgement of this Court (Coram : Ms.R.M. Doshit, J.) in the matter of Ambalal Chhaganlal Rawal v. Commissioner of Police rendered in Special Civil Application No.10687 of 1998 dated 9.8.1999, wherein the learned Judge was pleased to hold that non supply of Chemical Analyser's report had resulted into deprivation of the constitutional right of the petitioner to make effective representation.

16. Shri Mehta, learned counsel for the appellant also relied upon the judgement of the Bombay High Court in the matter between Chandra Shekhar Ojha v. A.K. Karnik and others, reported in 1982 Cri. L.J. 1642. Shri Mehta submitted that the Bombay High Court was considering the provisions of sections 3 and 5A of

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as "COFEPOSA Act"). Shri Mehta submitted that in the case before the Bombay High Court, copies of judgements which were relied upon by the detaining authority while passing the detention order were supplied to the detenu along with the order of detention. But due care and precaution were not taken to supply legible copies of documents. Some of the copies were either blank or wholly illegible. In such circumstances it was contended that the detention was void ab initio and there is no question of sustaining such void order under section 5A of COFEPASA in respect of those grounds, which were based on illegible documents. It was also contended that non supply of the grounds of detention or relevant documents had the effect of invalidating the detention itself and in such a case the detention could not be said to be in accordance with the procedure prescribed by law. When the detention itself was not in accordance with the procedure prescribed by law, such void order of detention cannot be supported by taking recourse to section 5A of COFEPOSA Act. It was also contended that an order which was void ab initio could not be validated or supported by taking recourse to section 5A of COFEPOSA Act. It was argued that section 5A of COFEPOSA Act will come into operation only after communication of the grounds and following constitutional safeguards. It was also urged that supply of relevant documents to enable the detenu to make effective representation is a constitutional safeguard. Shri Mehta submitted that in the present case also on account of non supply of the Chemical Analyser's report, right of the detenu to make representation under Article 22(5) of the Constitution of India is violated and therefore, by applying the ratio of the Bombay High Court's judgement in the case of Chandra Shekhar Ojha (supra) the continued detention is required to be quashed and set aside holding that the right of the original petitioner-appellant herein is violated.

17. Shri H.M. Mehta, learned counsel appearing for the appellant submitted that when the Chemical Analyser's report is not supplied, there is no communication of ground and in such situation, even section 6 of the Act cannot save such an order. In support of this contention, Shri Mehta relied upon the judgement of the Division Bench of this Court in the matter of Vikramsinh Pravinsinh Rana v. State of Gujarat and another, reported in 1988 (2) GLR 1336. Shri Mehta relied upon the following portion of para 3 of the judgement:

".. .. It is difficult to accept the

submission of Mr.G.D. Bhatt, the learned Addl. Public Prosecutor that section 6 of the PASA Act can be pressed into service and the orders of detention can be sustained on other grounds. We find it difficult to agree with Mr.Bhatt that sec.6 of the PASA Act can be pressed into service in a case like the present one. Section 6 of the PASA Act comes into play only when the grounds are communicated but one or more of the grounds are found to be vague, non existent, etc. When there is non communication of some of the grounds to the detenue, the question of invoking of the provisions of sec.6 of the PASA Act does not arise. When some of the grounds are not communicated there is violation of Art.22(5) of the Constitution of India and, therefore, the detention becomes unconstitutional. We are supported with the view which we are inclined to take by the decision of the Division Bench of this Court rendered in (Bhimdevsinh Dilavarsinh Darbar v. State) Special Criminal Application No.186 of 1987 (Coram D.H. Shukla & P.M. Chauhan, JJ.) on 5.8.1987. In that case also it was a question of non communication of the grounds and the submission made on behalf of the State based on sec.6 of the PASA Act was rejected. The Division Bench of this Court referred to a judgement of the Division Bench of the Bombay High Court in the case of Chandra Shekhar Ojha v. A.K. Karnik & others, reported in 1982 Cri. L.J. 1642 where such a contenting was raised on behalf of the State and rejected. The Division Bench of the Bombay High Court in that case relied upon the decision of the Supreme Court in the case of Kamla Kanhaiyalal Khushalani v. State of Maharashtra, reported in AIR 1981 SC 814 where the Supreme Court held that the documents and the material relied upon in the order of detention from an integral part of the grounds and must be supplied to the detenu pari passu the grounds of detention and if the documents and material are even supplied late, then the detenu is deprived of an opportunity of making an effective representation against the order of detention. The Bombay High Court observed that before the order of detention can be supported the constitutional safeguards must be strictly observed. In the case of Bhupinder Singh v. Union of India & others, 1987 (2) SCC 234 the detention was set aside on the ground that the right of making representation

guaranteed under Art.22 of the Constitution of India was denied."

18. Shri K.T. Dave, learned Assistant Government Pleader appearing for the respondents defended the judgement of the learned Single Judge and order of detention. Shri Dave submitted that so far as non supply of Chemical Analyser's report is concerned, the learned Judge has erred in observing that,

".. .. irrespective of the fact whether they are considered at the time of passing the order of detention or not, ..."

Shri K.T. Dave, learned Assistant Government Pleader submitted that so far as the observation to the effect that the Chemical Analyser's report is a vital document, there cannot be any dispute. So far as the observation to the effect that non supply of vital documents vitiates the continued detention, there cannot be any dispute. But the observation that,

".. .. irrespective of the fact whether they are considered at the time of passing the order of detention or not",

the learned Judge has erred and to that extent said observation is required to be quashed and set aside. Shri Dave submitted that this Court in judgement and order rendered in the matter of Ambalal Chhaganlal Rawal in Special Civil Application No.10687 of 1998 (supra) has rightly observed that,

".. .. In the present case, as stated hereinabove, it is not disputed that the petitioner has not been furnished with the reports of the chemical examination, nor it is contended that such reports were not available on the date of the impugned order. It must, therefore, be held that the petitioner is deprived of his Constitutional right to make an effective representation." (emphasis supplied)

Shri Dave, learned Assistant Government Pleader submitted that in the present case in the affidavit filed by Shri V.K. Gupta, Commissioner of Police, Surat City, it is stated in para 8 as under:

"8. With reference to the averments made in para 12 & 13 of the petition, I say and submit

that the Report of Chemical Analyser cannot be termed as most important, relevant and vital documents as contended by the petitioner. I further say and submit that for the purpose of passing the order of detention, I have not considered and relied upon the Report of the Chemical Analyser and therefore, the said documents are not supplied to the detenu. I further say and submit that documents, i.e. Report of Chemical Analyser were not in existence in respect of Criminal Case against the detenu, hence there is no question of supply the same arise, even if demanded by the detenu. I further say and submit that I have already intimated by communication dated 9.2.2001 in respect of the representation about the demand of Report of the Chemical Analyser that as and when such report will be available, the same will be supplied to the detenue."

19. Shri Dave, learned Assistant Government Pleader submitted that in view of the specific case being pleaded by the detaining authority, the learned Judge ought to have held that the Chemical Analyser's report was not considered and relied upon at the time of passing of the order and that the same was not in existence in respect of the criminal cases against the detenu. Therefore, the order of detention is not vitiated on account of non supply of the same. Shri Dave, learned Assistant Government Pleader submitted that the observations of the learned Single Judge that, "irrespective of the fact whether they are considered at the time of passing the order of detention or not" are required to be quashed and set aside by this Court. We have considered the judgement of this Court in the matter of Ambalal Chhaganlal Rawal (supra) rendered in Special Civil Application No.10687 of 1998 dated 9.8.1999 and the submissions of both the sides in this case. We have also considered the judgements of this Court (i) in Special Criminal Application No.1633 of 1993 in the matter of Amarsingh Chatursingh Chauhan v. The Commissioner of Police, Ahmedabad and others, (Coram : S. Chatterji & A.N. Divecha, JJ.) dated 26.7.1994 and (ii) in the matter of Amrutbhai Ramabhai Vagri v. Commissioner of Police, Ahmedabad City & others reported in 1994 (2) GLH (U.J.) 5. In our considered opinion a document which is not relied upon cannot be considered to be a relevant document and is not required to be supplied to the detenu. We are also not able to subscribe to a view that a document which is not in existence at the time of passing of detention order is required to be supplied to

the detenu. The Chemical Analyser's report in cases of seizure of alcohol (country liquor) is important for working out the composition of liquor seized, but to come to the conclusion that what is seized is liquor, the Chemical Analyser's report is not necessary. In view of that non supply of Chemical Analyser's report until it is obtained cannot be allowed to vitiate the order of detention. We are of the opinion that the detaining authority was right in its say when it stated in its affidavit that,

> ".. .. I further say and submit that I have already intimated by communication dated 9.2.2001 in respect of the representation about the demand of Report of the Chemical Analyser that as and when such report will be available, the same will be supplied to the detenue."

In view of the aforesaid discussion, the observations of the learned Single Judge,

> ".. .. irrespective of the fact whether they are considered at the time of passing the order of detention or not, ..."

are required to be quashed and set aside.

20. Shri K.T. Dave, learned Assistant Government Pleader submitted that there are number of decisions of the Honourable Apex Court and by this Court which lay down the proposition that each activity of the detenue is a separate ground and in view of the provisions of section 6 of the Act, each ground of detention is severable. Shri Dave submitted that in view of section 6(b) of the Act the Government and the officer making the order of detention is deemed to have made the order of detention under the said section after being satisfied as provided in the section with reference to remaining ground or grounds. Therefore, the detenu has to assail the order of detention on each ground separately. Shri Dave submitted that in the present case also the order of detention is passed on as many as 7 grounds, in all, namely, 5 criminal cases and 2 statements. Shri Dave submitted that it is not true that the order of detention was passed on one composite ground and not separate grounds. Shri Dave relied upon para 34 of the judgement of Division Bench of this Court in the matter of Manjurhusen Ahmedhusen v. Commissioner of Police, Ahmedabad and others, reported in 1989 (1) GLH 620, which reads as under:

"34. The matter may be examined from yet another angle. As disclosed in the grounds of detention there were 13 criminal cases under the Bombay Prohibition Act against the detenu. His activities as a bootlegger are, therefore, storing and selling country liquor. While carrying on this activity he also involved in certain incidents narrated by six different witnesses whose statements have been referred to in the grounds of detention. In above view of the matter each activity of the detenu is a ground on the basis of which the order of detention should have been passed by the detaining authority. In view of the provisions of section 6 of the Act when an order of detention under section 3 has been made on two or more grounds, such order of detention is deemed to have been made separately on each ground and such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is/ are vague, non existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever. In view of the aforesaid provisions of section 6 of the Act and order of detention is passed on different prohibition cases and another activities, then each activity is to be treated as a separate ground for passing the order of detention. This deeming fiction has to be carried to its fullest logical extent. If in connection with one of the grounds the provisions of Article 22(5) of the Constitution of India are violated, inasmuch as in respect of that particular ground the petitioner has not been provided adequate opportunity of making representation, the order can be sustained if it is shown that in respect of other grounds the detenu had been afforded opportunity of making representation against of detention." (emphasis supplied)

21. Shri Dave submitted that in the case before Division Bench of this Court it was the case of a bootlegger wherein the Court has considered as many as 13 criminal cases and the Court considering the provisions of section 6 of the Act held that,

"If in connection with one of the grounds the provisions of Article 22(5) of the Constitution of India are violated, inasmuch as in respect of

that particular ground the petitioner has not been provided adequate opportunity of making representation, the order can be sustained if it is shown that in respect of other grounds the detenu had been afforded opportunity of making representation against of detention."

22. Shri Dave, learned Assistant Govt. Pleader relied upon the judgement of Division Bench of this Court in the matter of Shantaben, w/o Ambaram Vithalbhai v. Commissioner of Police and others, reported in 1990(1) GLH 90. Shri Dave invited attention of the Court to para 5 of the said judgement wherein the facts of the case are narrated and then relied upon para 7 of the judgment wherein the Court has considered aspect of each activity as a separate ground. For ready reference, para 7 of the said judgement is quoted hereunder:

"7. The aforesaid definition of the term 'bootlegger' covers many activities. There may be criminal cases against the detenu in respect of one or more activities of storing and selling contraband liquor. Since both the activities may be forming part of one and same activity, it may be considered to be one ground. Again if there is another case, it would be another ground. There need not be confusion with regard to the object of the act, that is, to prevent the bootlegging activities and the ground of detention. In the case of State of Gujarat v. Chamanlal reported in AIR 1881 SC page 1480, similar question arose as regards the provisions of section 5A of COFEPOSA. Section 5A of COFEPOSA is pari materia with the provisions of section 6 of the Act. In the case before Supreme Court the detenu was detained with a view to prevent smuggling of contraband goods. One of the grounds was held to be irrelevant by the High Court and the High Court held that since that irrelevant ground also entered into the process of subjective satisfaction of the detaining authority, the order of detention cannot be sustained. The Supreme Court inter alia observed in para 2 of the judgement that the detention order under section 3 of the COFEPOSA is only for the purpose of preventing smuggling and all the grounds whether there are one or more would be relatable only to various activities of smuggling. The Supreme Court further observed that the act of smuggling covers several activities each for being a separate ground of

detention. After quoting the passage from the judgement of the High Court and stating that the reasoning of the High Court was not acceptable, the Supreme Court has observed as follows :

"The process of reasoning adopted by the High Court is absolutely unintelligible to us. It is manifest that whenever the allegations of smuggling are made against a person who is sought to be detained by way of preventing further smuggling, there is bound to be one act or several acts with the common object of smuggling goods which is sought to be prevented by the Act. It would, therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case there could be any other ground for detention except the one which relates to smuggling. In our opinion, this is neither the object of the Act nor can such an object be spelt out from the language in which section 5A is couched. What the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention." (emphasis supplied)

23. Shri Dave, learned Assistant Govt. Pleader relied upon yet another Division Bench judgement of this Court in the matter of Alarakh alias Kadi Alibhai Sepai v. State of Gujarat and another, reported in 1993 (1) GCD 685 (Guj.), wherein also this Court held that even in case of failure of one of the grounds on which the order of detention is passed, the order would not be vitiated and that order shall be deemed to have been made with reference to the remaining ground or grounds of detention. Shri Dave relied upon para 4 of the said judgement, which reads as under:

"4. It may be stated that if this would have been the only ground on which detention order was based, the submission was fully justified with the support of the judgement of the Supreme Court in the case of D.S. Agarwal, AIR 1989 SC page

> 1282. In this case there is another case also registered against him and also there are four different incidents narrated in the statement of the witnesses. So there are other five grounds also. In view of section 6 of the Gujarat Prevention of Anti- social Activities Act, 1985 when a person has been detained in pursuance of an order of detention under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each ground and accordingly such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non existent, non relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever, and further that it shall not be invalid and or inoperative on the ground that it was not therefore, possible to hold that the Govt. or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention. Sub-section (b) makes it very clear that the Govt. or the officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

24. Shri Dave, learned Assistant Govt. Pleader submitted that so far as the contention raised on behalf of the appellant/ original petitioner regarding her right of representation being affected on account of non supply of the names of associates of the detenu and the names of persons who came forward to rescue the witnesses, is concerned it is without any substance. Shri Dave submitted that once the detaining authority is exercising privilege under section 9(2) of the Act, said privilege is to be exercised effectively. In fact, the privilege is exercised with a view to see that the identity of the witness, whose statement is recorded and relied upon by the detaining authority is not disclosed to the detenu so that his life or property is not put to any danger from the detenu. Shri Dave submitted that as far as relying upon the statement is concerned the detenu is required to be supplied such information on the basis of which he/she can make a representation against the said incident. If sufficient material is supplied on the basis of which the detenu can make representation against the same; that is enough for safeguarding the right of making

representation by the detenu. Shri Dave submitted that this Court while considering the question of right of representation under Article 22(5) of the Constitution of India which was alleged to have been violated on account of vagueness of the statement of the witness wherein specific date of incident and the names of associates of the detenu were not supplied, was considered by a Division Bench of this Court. Shri Dave relied upon para 8 of the judgement of Division Bench of this Court in the case of Vijay Rambrij Yadav v. Commissioner of Police, Ahmedabad City and others, reported in (1993) (1) GLH 477, wherein this aspect was considered, which reads as under:

"8. The second statement of 22.10.1991 which is on page 37 refers to the incident taken place before 17 days from the date of recording of the statement. It is stated in the said statement that the person who gave the statement was going on the Road opposite Amraiwadi Post Office. After school hours at about 12.30 noon when the petitioner called him by making a gesture that when he went near the petitioner he told him that he was giving information to the Police and that he was a man of police and thereupon the petitioner became angry and started giving him vulgar abuses; that the petitioner also caught hold of his neck and threw him down on the ground and was given kicks; that he raised shouts and thereupon many persons including the shop keepers gathered there, that at that time the petitioner's associate came with revolver in his hand and took away amount of Rs.60/-, from the pocket of the person who gave the statement; that thereafter the petitioner gave threat that if at all he files any complaint he would be killed and when the petitioner started showing the revolver to the persons who had gathered there they started fleeing away and persons of the locality closed the doors of their houses and shop keepers also closed their shops. This statement is challenged on the ground that name of the petitioner's associate who came there has not been mentioned. To find out as to whether a particular statement is vague or not it is to be considered whether sufficient particulars regarding date, time and place of the incident are given and if such particulars are given it cannot be said that the statement is vague. It is rather difficult to expect from the victim to know the name of the associate of the detenu.

Merely because the name of the associate is not given it cannot be said that the statement is vague and it should be discarded. On perusal of the said statement we are satisfied that the required particulars are given and therefore, it is not vague."

25. Shri Dave, learned Assistant Govt. Pleader submitted that this Court has, in so many words, held that,

"Merely because the name of the associate is not given it cannot be said that the statement is vague and it should be discarded."

26. Shri Dave relied upon the judgement of this Court in the case of Bai Amina v. State of Gujarat, 1981 GLR 1186 wherein this Court while interpreting section 8(2) of the National Security Act has held that while withholding disclosure of material facts and particulars to the detenu on the ground that it would harm public interest, another public interest, which requires the disclosure of all relevant particulars and materials on which the order of detention is based, with a view to affording an effective opportunity of representation to the detenu against the order of detention, must be borne in mind, and that the delicate balance between the two must be maintained by the detaining authority. The Court has examined the right conferred by clause (5) of Article 22 of the Constitution of India and the limitation placed upon it by clause (6) of that Article.

27. Shri Dave, learned Assistant Govt. Pleader referred to the Full Bench judgement of this Court in the case of Chandrakant N. Patel v. State of Gujarat and others, reported in 1991 (1) GLR 761, wherein the judgement in the case of Bai Amina (supra) was considered along with the judgment of the Bombay High Court in the case of Balkrishna Kashinath Khopkar v. The District Magistrate, Thana, 1956 (58) BLR 614. Shri Dave relied upon para 5 of the Full Bench judgement in the case of Chandrakant N. Patel (supra) wherein the Court considered that if the privilege is claimed bona fide and after proper application of mind, then the detenu cannot legitimately complain that he has been deprived of his right to make an effective representation because of the vagueness of the grounds of detention. For ready perusal para 5 of the said judgement is reproduced hereinbelow:

"On careful reading of the said decision, it can be said that the ratio of the decision is that

> the privilege under sec.8(2) of the National Security Act can be claimed by the detaining authority only when it is properly and genuinely satisfied that it is against public interest to disclose the facts which are withheld while communicating the grounds of detention to the detenu, and that while deciding whether it is necessary to withhold the materials, facts and particulars to the detenu on the ground that it will be against public interest to do so, another public interest which requires disclosure of all the relevant materials and particulars on which the order of detention is based with a view to affording an adequate opportunity of making an effective representation to the detenu against the order of detention must be borne in mind and the delicate balance between the two must be maintained. If the privilege is claimed bona fide and after proper application of mind, then the detenu cannot legitimately complain that he has been deprived of his right to make an effective representation because of the vagueness of the grounds of detention. The observations which have been made by this Court in that case as regards the promise of confidentiality, etc., are by way of elaboration as to what can be regarded as sufficient or not sufficient for the purpose of arriving at the bona fide satisfaction of the detaining authority in that behalf."
> (emphasis supplied)

28. Shri K.T. Dave, learned Assistant Government Pleader submitted that so far as the contention raised on behalf of the appellant regarding her right of representation being affected when the order of detention is made on two or more grounds and when one ground is found vague or non existent and on account of that the order of detention is to be held 'invalid' as the right of representation is affected and that the provisions of section 6 of the Act being inconsistent with or impinging the scope of sphere of Article 22(5) of the Constitution of India, Shri Dave submitted that the Full Bench of this Court has considered this aspect and has answered in negative. Shri Dave submitted that the Full Bench of this Court relying upon the judgement of the Constitutional Bench of the Honourable Apex Court consisting of nine Honourable Judges, in the matter of Attorney General for India etc. v. Amratlal Prajivandas and others, reported in AIR 1994 SC 2179, has answered the contention raised on behalf of the appellant in so many words. Shri Dave submitted that the questions

referred to the Full Bench were:

(i) What will be the scope and sphere of operation of Article 22(5) of the Constitution of India when section 5 of the PASA Act is applicable?

(ii) When one ground of detention is non existent as it is vague, whether it would affect the right to make representation under Article 22(5) of the Constitution of India?

29. Shri K.T. Dave, learned Assistant Government Pleader relied upon the judgment of the Full Bench in the matter of Paresh Ramanlal Amin v. State of Gujarat, reported in 2000 (2) GLR 1798 wherein this Court answered both the aforesaid question in paras 7 and 8, which read as under:

"7. In view of this, we find that sec.6 of the PASA Act cannot be held to be inconsistent with the provisions contained in Art.22(5) of the Constitution of India and applicability of sec.6 of PASA Act does not impinge upon the scope and sphere of operation of Art.22(5) of the Constitution of India. The first question is answered accordingly.

8. So far as the second question is concerned, we hold that one ground of detention which is non existent as it is vague, would not affect the right to make representation under ARt.22(5) of the Constitution of India. The second question is answered accordingly."

30. Shri Dave, learned Assistant Government Pleader submitted that he may be permitted to read few paragraphs from the judgement of the Apex Court in the matter of Attorney General for India (supra). Shri Dave relied upon paras 44, 44(2), 48 and 55, but emphasised paras 44 and 48. Paras 44 and 48 are reproduced hereunder:

"44. Question No.6: Petitioners challenged the validity of Section 5-A of COFEPOSA on the ground of it being violative of the twin safeguards provided by clause (5) of Article 22. It is submitted that the said clause gives two rights to the detenu, viz., (i) to have the grounds on which the order of detention is based communicated to him as soon as possible and (ii) to be afforded the earliest opportunity of making

representation against the order of detention [see State of Bombay v. Atma Ram Vaidya, 1951 SCR 167 (AIR 1951 SC 1570]. If the grounds included irrelevant or non-existent grounds, it is submitted, the first right is violated and if the grounds included vague grounds, the second right is violated. According to the learned counsel, Article 22(5), as interpreted by this Court over the last more than four decades, means this: an order of preventive detention is based upon the subjective satisfaction of the authority and where such satisfaction has been arrived at on grounds some of which are relevant and definite grounds and some irrelevant, vague and nonexistent, it is not possible or permissible for the court to predicate which grounds have influenced the formation of his satisfaction which means that the order of detention must fall to the ground; if this is what Article 22(5) means and says, it is not open to Parliament to make a law saying that where the grounds upon which the requisite satisfaction has been formed are partly good and partly bad, yet the order must be held to be good with reference to and on the basis of good grounds, eschewing the bad grounds. Such a law, it is submitted, would be in direct conflict with Article 22(5). Let us examine this submission rather closely."

"48. Now, take a case, where three orders of detention are made against the same person under COFEPOSA. Each of the orders is based upon only one ground which is supplied to the detenu. It is found that the ground of detention in support of two of such orders is either vague or irrelevant. But the ground in support of the third order is relevant, definite and proximate. In such a case, while the first two orders would be quashed, the third order would stand. This is precisely what the first part (the main part) of Section 5-A seeks to do. Where the order of detention is based on more than one ground, the section creates a legal fiction, viz., it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order. The result is the same as the one in the illustration given by us hereinabove. The second part of it is merely clarificatory and explanatory, which is evident from the fact that it begins with the word "accordingly" apart from the fact that it is

joined to the first part by the word "and". In such a situation, we are unable to see how can the section be characterised as inconsistent with Article 22(5). Had there been no first part, and had the section consisted only of the second part, one can understand the contention that the section is in the teeth of Article 22(5) as interpreted by this Court this was indeed the situation in K. Yadigiri Reddy v. Commissioner of Police, ILR (1972) Andhra Pradesh 1025, as we shall presently indicate. It is difficult to conceive any inconsistency or conflict between Article 22(5) and the first the main part of Section 5-A. Parliament is competent to create a legal fiction and it did so in this case. Article 22(5) does not in terms or otherwise prohibit making of more than one order simultaneously against the same person, on different grounds. No decision saying so has been brought to our notice. Be that as it may, we do not see why Parliament is not competent to say, by creating a legal fiction, that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds. If this creation of a legal fiction is competent, then no question of any inconsistency between the section and Article 22(5) can arise."

31. After considering the contentions of both the sides we find no substance in any of the contentions raised by Shri H.M. Mehta, learned counsel appearing on behalf of the appellant/ original petitioner-- detenu. The question regarding right of representation conferred under Article 22(5) of the Constitution of India being affected when section 6 of the Act is applied, is already answered by the Apex Court in the case of the Attorney General of India (supra), relying on which the Full Bench of this Court has also answered the same. Said contention is without any merit and the same is rejected. So far as the other contentions raised by Shri Mehta, learned counsel for the appellant are also fully answered by the reply affidavit and the authorities relied upon by the learned Assistant Government Pleader and therefore, the judgement and order of the learned Single Judge stand except the observations made in para 16 of the judgement which read as under :

".. .. irrespective of the fact whether they are considered at the time of passing the order of detention or not, ...",

which are hereby quashed and set aside.

32. The Letters Patent Appeal fails which is dismissed accordingly. No order as to costs.

(D.M. Dharmadhikari, C.J.)

(Ravi R. Tripathi, J.)

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